

CANUCK LAW

Reporting That You're Not Getting Elsewhere (Do Your Own Research To Verify)

AUGUST 29, 2012 BY RONNIE

Race Based Discounts In Criminal Courts



Here is some [information](#) on how “Gladue Rights” work in Canada.

Equality under the law should mean that all people are treated equally.

However, that is not the case in Canada, with regards to sentencing in criminal justice. To be specific, one group: Aboriginal, aka First Nations, aka Native have a section of the law specifically to give them a “race-based discount”.

Here is section 718.2(e) of the Canadian Criminal Code:

all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

Yes, one racial group is allowed to get what amounts to a race based discount. The 1999 Gladue ruling essentially paved the way for this to be normalized across Canada, while the Ipeelee decision expanded the scope to include long term offenders.

There have been complaints of recent in the media that despite these legal changes, the proportion and rates of Aboriginals in prison continues to rise. (See questions below)

Here are the links to the Court decisions of Gladue (1997, 1999) and Ipeelee (2012).

R. v. Gladue, 1997 CanLII 3015 (BC CA)

R. v. Gladue, [1999] 1 SCR 688, 1999 CanLII 679 (SCC)

R. v. Ipeelee, [2012] 1 SCR 433, 2012 SCC 13 (CanLII)

People should be treated equally under the law, and that no one group should receive any lesser or harsher punishment because of race, gender, religion, etc...

Defenders of the law claim that this is necessary because of "overrepresentation" in Canadian prisons. However, a number of serious questions don't get asked:

(1) What are the actual crime rates by race? Is it one group being unfairly targeted, or is it one group simply committing more crime, and they are actually being treated fairly under the law? There is a huge difference.

(2) Yes there was historical discrimination, but why should people who were born after this, and not subjected to it, be benefiting from it?

(3) If there is "systemic discrimination" against Aboriginals, then how does handing down lighter sentences actually address this? Doesn't it avoid the underlying issue?

(4) If reserves in particular are so bad (they are often referred to as 3rd world conditions), wouldn't the humane thing be to shut them down entirely?

(5) Should the Canadian government be allowing a policy that aims to create "equality of outcome" in the prisons? Should jails look like a random sample of society, rather than a reflection of who is actually committing crimes?

(6) If "Gladue Rights" lead to lower sentences, couldn't smart criminals game the system by

committing "more" crime, but still getting lower sentences?

Sadly, there seems to be little interest in the media, courts or politics for addressing these questions.

 **CANADA, CANADIAN DECISIONS, CANADIAN ONLY, CRIMINAL, GLADUE, HUMAN RIGHTS, IDENTITY/RELIGION**